STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL CRAIG SATTERLEE,

Defendant-Appellant.

UNPUBLISHED
January 26, 2010

No. 288411
Kalamazoo Circuit Court
LC No. 2008-000077-FH

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of aggravated stalking, MCL 750.411i. We affirm.[1]

I. Evidentiary Rulings

Defendant first argues that the trial court improperly excluded certain evidence in support of his defense that he contacted the victim after she contacted him. Specifically, defendant claims the court should have allowed into evidence (1) a police report; (2) testimony that the victim denied him parenting time; and (3) testimony that defendant had suffered a nervous breakdown. The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). An evidentiary error does not merit reversal in a criminal case unless, after an examination of the entire cause, it appears that it is more probable than not that the error was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

A. Police Report

Defendant contends that the court erred in denying admission of a police report because it would have allegedly tended to impeach the victim's credibility by showing that she had initiated contact with him. We disagree. The trial court properly concluded that the police report was hearsay and that none of the exceptions to the prohibition against hearsay applied in this matter.[2]

[1] This appeal has been decided without oral argument pursuant to MCR 7.214(E).

[2] MRE 803(8) provides an exception for "matters observed pursuant to duty imposed by law as
(continued…)

Thus, the police report was properly excluded. Moreover, we note that although the report was offered not for the truth of the matter asserted, but to impeach the victim's credibility, defense counsel was not otherwise prevented from directly cross-examining the victim regarding the event in the police report. This was a proper mode of eliciting impeachment evidence. Thus, we see no error and cannot conclude that the trial court abused its discretion by ruling that the police report was inadmissible hearsay.

B. "Parenting Time" Testimony

Defendant also argues that the trial court erred in not allowing counsel to question the victim about whether she had denied him parenting time. Apparently, defendant was attempting to show the victim had initiated contact with him and that he responded to her communication. The trial court excluded the evidence on relevancy grounds and we agree. We simply fail to see how evidence that the victim had denied defendant parenting time would have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Further, even assuming the topic of parenting time was relevant to the victim's credibility, which is always a material issue, *People v McGhee*, 268 Mich App 600, 637; 709 NW2d 595 (2005), it was properly excluded because its probative value was substantially outweighed by its potential to confuse the issues or mislead the jury. MRE 403; *People v Yost*, 278 Mich App 341, 407; 749 NW2d 753 (2008). Thus, the trial court properly excluded this testimony.

C. "Nervous Breakdown" Testimony

Lastly, defendant suggests that the trial court erred by preventing counsel from pursuing evidence regarding defendant's alleged nervous breakdown. We disagree. Evidence of defendant's mental state during his divorce from the victim was irrelevant to the charge of aggravated stalking, which involves willful acts of "unconsented conduct." MCL 750.411i. We also fail to see how defendant's testimony would have been relevant to his defense theory that his contacts with the victim were mutual. As noted, evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401. Here, the connection between defendant's emotional state and the crime at issue is lacking. Accordingly, this claim of error also fails.

II. Jury Instructions

Defendant next asserts that the supplemental jury instruction was coercive. We disagree. Because defense counsel failed to object to the instruction, our review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999). Generally, an unduly coercive jury instruction that renders the instruction unfair requires reversal. *People v Hardin*, 421 Mich 296, 316; 365 NW2d 101 (1984). Relevant to whether an instruction is coercive is whether "the court required, or threatened to require, the jury to deliberate for an unreasonable length of time or for unreasonable intervals." *Id.* Also

(…continued)

to which matters there was a duty to report, [but] exclude[es], however, in criminal cases matters observed by police officers and other law enforcement personnel."

relevant is language containing "pressure, threats, [or] embarrassing assertions . . . ." *People v Holmes*, 132 Mich App 730, 749; 349 NW2d 230 (1984). Moreover, a verdict returned in less than an hour is not in itself proof that the instruction was coercive. *Id*.

Here, after the jury had deliberated for approximately five-and-a-half hours, the jurors notified the trial court that they could not agree. As a result, the court read to the jury CJI2d 3.12, the standard instruction requiring deadlocked juries to continue their deliberations. Before sending the jury back for further deliberations, the trial court stated, "There is not going to be declared a hung trial, not in today's date, you will be returning tomorrow for certain." It also urged the jury to "try to reach agreement if you can do so without violating your own judgment." The court further advised the jurors, "you each should not only express your opinion, but give the facts and reasons on which you base it. By reasoning the matter out, jurors most often can reach agreement." Less than an hour later, the jury returned a guilty verdict.

We see no error here. The trial court's instruction contains no pressure or threats and was not coercive such that it would "cause a juror to abandon his conscientious dissent and defer to the majority solely for the sake of reaching agreement." *Hardin*, *supra* at 316. Nor did the instruction "require[] or threaten[] to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals." *Id*. at 320. Accordingly, defendant has failed to show that an error occurred and his claim fails.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck